



12:40 P.M.

(In open court.)

THE COURT: You may be seated. Good afternoon.  
This is multi district litigation case number 08-1943, In  
Re: Levaquin Products Liability Litigation. Let's have  
counsel note appearances.

First present in the courtroom for plaintiffs?

MR. GOLDSER: Good afternoon, Your Honor. Ron  
Goldser for plaintiffs.

THE COURT: And on the telephone for plaintiffs?

MR. ZIMMERMAN: Good afternoon, Your Honor. This  
is Bucky Zimmerman for the plaintiffs.

MR. FITZGERALD: Good afternoon, Your Honor.  
This is Kevin Fitzgerald for the plaintiffs.

MR. BROSS: Good afternoon, Your Honor. This is  
Bill Bross for the plaintiffs.

MS. JOHNSON: Hi, Your Honor. This is Caia  
Johnson for plaintiffs.

MS. BOLDT: Good afternoon, Your Honor. This is  
Paige Boldt on behalf of Ryan Thompson for the plaintiffs.

THE COURT: All right. And for the defendants in  
the courtroom?

MS. VAN STEENBURGH: Good afternoon, Your Honor.  
Tracy Van Steenburgh on behalf of defendants.

1 MS. LENAHAAN: Dana Lenahan on behalf of  
2 defendants.

3 THE COURT: Good afternoon to both of you.

4 On the telephone for the defendants, anybody?

5 MS. VAN STEENBURGH: Your Honor, I think there is  
6 no one today.

7 THE COURT: All right. We have a status  
8 conference scheduled today. Mr. Goldser, do you want to  
9 start us off?

10 MR. GOLDSER: Well, I think Ms. Van Steenburgh is  
11 actually going to do most of the talking today since she  
12 has most of the data on the settlement status of the cases.

13 MS. VAN STEENBURGH: Good afternoon, Your Honor.  
14 Going through the agenda, we have a case count, although I  
15 have to be honest with you, it probably is not that  
16 significant because these are the numbers pending some  
17 dismissals, but currently there are 1930 pending cases in  
18 the MDL, 1943 pending plaintiffs within all of those cases.

19 As I said I will get to the issue of how many  
20 cases have been settled, so you will be seeing dismissals  
21 come through. There are five state cases. There are three  
22 in Illinois, one in Pennsylvania and one in Mississippi to  
23 my knowledge, and maybe Mr. Goldser can update this. I  
24 don't believe there are any trial dates set for any of  
25 those cases at the moment.

1 MR. GOLDSER: No.

2 MS. VAN STEENBURGH: With respect to New Jersey,  
3 there was a status conference that was scheduled for  
4 January 25, but that was cancelled, and there is no pending  
5 status conference at the moment. Judge Higbee did not set  
6 another one.

7 I do know that there is an issue, and I don't  
8 know if we want to bring this up now. A parallel CMO  
9 relative to the common benefit fund has not been filed or  
10 signed by Judge Higbee, and I think the plaintiffs are  
11 waiting for that to happen, and we need that to happen as  
12 well in order for some things to happen with settlement  
13 payments, but there is nothing currently --

14 And, Bucky Zimmerman, I think you're on the  
15 phone. I think you're aware that there is nothing imminent  
16 in terms of payment for any of the settlement of the New  
17 Jersey cases at the moment.

18 MR. GOLDSER: I think that's accurate, Your  
19 Honor. My understanding is that Judge Higbee may be in the  
20 middle of a trial at the moment, and things may be getting  
21 backed up as a result, but certainly if there were a way to  
22 encourage her to get that order entered, that would be  
23 nice.

24 THE COURT: Let me ask you this: Do any of the  
25 lawyers who are representing New Jersey plaintiffs oppose

1 the order at this point in time?

2 MR. GOLDSER: Not to my knowledge. I believe it  
3 has been circulated to all of them. There were several who  
4 had voiced objections early on. Those objections have been  
5 withdrawn given the format that the order is in. The order  
6 in New Jersey is, I believe, identical word for word to the  
7 order entered here.

8 You may recall we even tried to put both captions  
9 on the same documents so that both courts could sign on the  
10 exact same document, but we're going to do them separately,  
11 but the words are the same. There was some suggestion that  
12 Judge Higbee wanted to take this up at the status  
13 conference just so she could talk it through.

14 That's rumor mill stuff, but to be sure, I think  
15 all the parties here are very interested in getting that  
16 order entered. So there is just no dispute at any point in  
17 time about any payment anywhere in the country.

18 THE COURT: All right. I think that's important  
19 that there is no one there voicing opposition to it because  
20 I think that would slow it up considerably with her.

21 MR. ZIMMERMAN: Your Honor, this is Bucky  
22 Zimmerman, and I have been involved in this process pretty  
23 directly. It's further my understanding that there are no  
24 objections, that any concerns that existed have been  
25 resolved, and there shouldn't really be any reason for

1 delay, other than Judge Higbee's trial calendar and the  
2 fact that she probably wanted to have executed at a hearing  
3 of the, at a status conference hearing to make sure that  
4 anybody who wanted to comment would have the right to do  
5 so.

6 And I think as Tracy said, I think she has put  
7 off two or three status conferences because of her trial  
8 schedule. I did talk to Mr. Winter about it, and he is not  
9 aware of any objections as well. I've also spoken to the  
10 liaison counsel for the plaintiff, and they have expressed  
11 no objections or concerns.

12 It's just a matter of getting it done. The  
13 problem we have is, I think people want their settlements,  
14 for the money to start moving, and of course, we're all  
15 concerned that until the orders are entered there is some  
16 risk that you're going to have to chase things down after  
17 the fact.

18 But we still have, I think, a little window  
19 before anything is going to move, and hopefully we can get  
20 this resolved. If Your Honor would think it appropriate to  
21 call Judge Higbee, that might help, but other than that,  
22 there is probably not much we can do.

23 THE COURT: All right. Thank you, Mr. Zimmerman.

24 MR. ZIMMERMAN: Okay. Yeah.

25 MS. VAN STEENBURGH: Item number 3, Your Honor,

1 I'm happy I'm proud to say that we have made a lot of  
2 progress, and the number of cases that have settled or are  
3 in the process of settling is 1,137 cases, and that  
4 includes all of the cases involving Zimmerman Reed and the  
5 six law firms that they were responsible for negotiating.

6 And we have resolved all but the *Schedin* case in  
7 terms of the inventory for Mr. Saul, and that includes  
8 Sharon Johnson. So we will not be going to trial. Holly  
9 gives us a good smile here. We will not be going to trial  
10 on March 5th in the Sharon Johnson case.

11 The *Schedin* case is still --

12 THE COURT: It was my excuse to get the case that  
13 we're doing right now over with, so --

14 MS. VAN STEENBURGH: Well, we won't tell them,  
15 and I guess you don't have to tell them, either. That will  
16 be our secret.

17 THE COURT: All right.

18 MS. VAN STEENBURGH: At any rate, with respect to  
19 the *Schedin* case, the request for petition for rehearing en  
20 banc was denied, and what is still left is a, the appeal  
21 from the Rule 60 motion. And so one of the things that you  
22 may see come across your desk, we're working on this at the  
23 moment, is a reduction on the bond amount.

24 THE COURT: Okay.

25 MS. VAN STEENBURGH: Because the punitive damages

1 obviously have gone away, and so the only amount is the  
2 underlying verdict amount. So we're working on what that  
3 would be, and we may make a proposed order to reduce that  
4 bond amount.

5 THE COURT: Okay. The Rule 60 motion issue,  
6 where is that at?

7 MS. VAN STEENBURGH: Was the Wells issue about  
8 would it have made a difference in terms of newly  
9 discovered evidence. That's all been briefed, and so we  
10 are now just waiting for a hearing date. In fact, we just  
11 got a notice of available dates, and the Eighth Circuit has  
12 asked us to determine whether we need to, you know, mark  
13 off any of those for other conflicts.

14 So we anticipate that will be coming up in the  
15 next couple of months.

16 THE COURT: Is it the same panel that is going to  
17 hear it?

18 MS. VAN STEENBURGH: Not that I'm aware of at the  
19 moment. So we have really made a lot of good progress.  
20 There are some cases. We're still in settlement  
21 discussions, so the number there is 180 cases, and then we  
22 do have some cases where settlement has been rejected, and  
23 there are approximately 25, 27 cases. They're sprinkled  
24 around.

25 Several of them are with -- let's see. Seven are



1 with one firm, thirteen are with another, and then there  
2 are a few one off cases here and there, and just you know,  
3 when I get to numbers later on about remand, we have  
4 included those currently in what numbers would be needed  
5 for remand or forum cases because we've heard, and I think  
6 Mr. Goldser can confirm at least with some of those law  
7 firms, that they want to go to trial, and they want to go  
8 ahead with some discovery before they do anything else. So  
9 they're ready to have their cases remanded.

10 So we are well on our way to working towards  
11 settlement with some other cases. If I kind of move down  
12 the calendar, I mean, move down the agenda, obviously the  
13 status of the Sharon Johnson trial, there are no other  
14 Minnesota cases that have to be tried. So we are done with  
15 all of those cases, and now it is a question of whether  
16 we're going to be pursuing remand of the ones that are left  
17 or transfer under the forum non conveniens motion.

18 Before I get there, though, I wanted to talk  
19 about item number 6, which is your order to show cause  
20 regarding the PFS deficiency. As I told Mr. Winter before  
21 when I was talking to him earlier, I have to at least  
22 express my frustration.

23 There seem to be firms that don't seem to be able  
24 to follow the rules and don't seem to understand deadlines.  
25 The 60-day deadline for the order to show cause that you

1 had issued was last Friday, and on Saturday, the Carey &  
2 Danis firm apparently sent via Federal Express -- which  
3 arrived in my office as I was walking over here.

4 I got a call saying, oh, we have 57 PFSs that  
5 have now arrived in the mail. So we just got those this  
6 morning, and I guess that's in response to the Court's  
7 order to show cause. So there is -- I'll leave it to the  
8 Court as to whether those are timely or not, but I at least  
9 wanted to advise the Court that that is what happened with  
10 the Carey & Danis cases.

11 We did receive a couple of other ones in a timely  
12 manner, so we have, I believe -- I don't remember how many  
13 total were on there, but all of the, I believe we received  
14 all the PFSs that were required under Exhibit A at this  
15 point in time.

16 We had prepared a second order to show cause for  
17 another set of cases that we were going to send into the  
18 Court, and there were 62 cases on that list, 54 of which  
19 are represented by the Padberg firm and 8 by Carey & Danis.  
20 We have held off submitting that because we did get a call  
21 from an attorney at the Padberg firm saying that he would  
22 be interested in talking about settling his cases, but we  
23 never received any information in order to do that.

24 And he claimed a miscommunication, and this  
25 morning we were able to talk to him to say we need your

1 PFSS if you want us to evaluate your cases. So we have  
2 agreed that he would get us all of the PFSSs by March 4th so  
3 that we can make a determination as to whether we want to  
4 resolve those or how we want to resolve those cases.

5 So we will hold off for the moment on a second  
6 order to show cause on deficient PFSSs because we may be  
7 able to resolve the rest of those.

8 THE COURT: All right.

9 MS. VAN STEENBURGH: So that's the status of your  
10 order and our other proposed order.

11 The other two issues are items number 7 and 8,  
12 and these are the issues relative to transfer pursuant to  
13 1404 and the remand. We have, let me take remand first. I  
14 will go in reverse order.

15 We have 191 cases currently that could be subject  
16 to remand. 44 of them we have pending settlement offers  
17 out, so those may or may not go away. 13 are Carey & Danis  
18 cases. 55 more are Padberg cases. So again, those, at  
19 least the Padberg cases, if in fact there is a resolution  
20 could go away. We will have some cases for remand, though,  
21 because we have had rejected offers for settlement.

22 THE COURT: Okay.

23 MS. VAN STEENBURGH: So I don't know. I think  
24 Mr. Fitzgerald may have sent you a proposed suggestion of  
25 remand that had all of our different comments. I would

1 propose to the Court that we wait, and we will submit yet  
2 another proposed suggestion of remand, partly because now  
3 we do have the decision by the Eighth Circuit not to have a  
4 hearing en banc and also some of the issues with respect to  
5 settlement. Mandatory settlements seem to have gone away,  
6 and also punitive damages may not be an issue since we have  
7 now heard from the Eighth Circuit on that issue.

8 So with the Court's permission, I would suggest  
9 that we submit yet another proposal for a suggestion for  
10 remand, which we can get to you within the next seven days.

11 THE COURT: All right. That's good.

12 MS. VAN STEENBURGH: With respect to those cases  
13 that were filed directly here but the plaintiffs live  
14 elsewhere, we don't know exactly how the remaining  
15 plaintiffs' firms want to handle that.

16 As you recall, Mr. Saul had an objection to our  
17 proposal that the Court issue an order to show cause as to  
18 why the cases shouldn't be transferred and had proposed  
19 that there be a consent procedure by which he would contact  
20 everyone. Well, now, Mr. Saul's cases have been settled.

21 I did send an e-mail to the Carey & Danis firm,  
22 asking if they wanted to go through a consent procedure,  
23 whether they preferred an order to show cause. I never  
24 heard a word from them. In fact, I've never heard anything  
25 from them on anything, so we're not sure how the rest of

1 the plaintiffs' firms want to proceed.

2 I did get a phone call from the Hollis law firm  
3 this morning, and they have eleven cases that would be  
4 subject to this, so I will try to call them back. I have  
5 not spoken with them.

6 THE COURT: How many cases are there?

7 MS. VAN STEENBURGH: 612, and 92 of those have  
8 pending settlement discussions going on. 436 are Carey &  
9 Danis cases, and that's why I called them and/or e-mailed  
10 them and tried to figure out what they wanted to do with  
11 those cases.

12 So the bulk of the cases that would be subject to  
13 transfer are all held by the Carey & Danis firm, and then  
14 there are a few here and there.

15 THE COURT: And there has been no communication  
16 from them regarding possible settlement?

17 MS. VAN STEENBURGH: No, we have not talked with  
18 them about settlement, and we have not gotten a response to  
19 the inquiry on how they want to proceed with the forum non  
20 cases.

21 MR. SOFFEY: Counsel?

22 MS. VAN STEENBURGH: Yes.

23 MR. SOFFEY: Could I have your name and telephone  
24 number?

25 THE COURT: Could you identify yourself for us,

1 please?

2 MR. SOFFEY: Yes. Joseph Soffey, S-o-f-f-e-y, in  
3 Garden City, Long Island, New York.

4 THE COURT: Thank you. And you're looking for  
5 the address or telephone number for Ms. Van Steenburgh?

6 MR. SOFFEY: Yes. I would like her name and  
7 telephone number so I can call her and discuss the matter.

8 THE COURT: Why don't you just do that for him  
9 right now?

10 MS. VAN STEENBURGH: Okay. Mr. Soffey, my name  
11 is Tracy Van Steenburgh. The last name is spelled capital  
12 V-a-n capital S-t-e-e-n-b-u-r-g-h.

13 MR. SOFFEY: And your telephone number, Counsel?

14 MS. VAN STEENBURGH: (612) 305-7521.

15 MR. SOFFEY: All right. And if I call you, I can  
16 discuss the matter with you, right?

17 MS. VAN STEENBURGH: Yes, you can.

18 MR. SOFFEY: All right. Fine. Thank you.

19 MS. VAN STEENBURGH: Yes.

20 Thank you, Your Honor. So the only other issue  
21 really is -- well, we have got a double on eight, but the  
22 projected end of the MDL. And we think these things are  
23 moving very quickly, and we have projected maybe by June,  
24 but we might be able to do it even sooner than that in  
25 terms of getting things wrapped up.

1           That is our goal here, and we're moving toward  
2           that end, and we're assuming the Court would like us to  
3           move toward that end.

4           THE COURT: Yes.

5           MS. VAN STEENBURGH: So we're moving it along as  
6           quickly as we possibly can to be able to do that.

7           THE COURT: All right. Thank you,  
8           Ms. Van Steenburgh.

9           Mr. Goldser?

10          MR. GOLDSER: Thank you, Your Honor. Just a  
11          couple of comments on the various subjects. Mr. Winter and  
12          I are talking directly about a number of firms' cases, and  
13          we're going to be updating for each other what is  
14          outstanding and what we may be missing so that nothing  
15          slips through the cracks. We will be doing that hopefully  
16          by the end of the week.

17          While Ms. Van Steenburgh indicates that there are  
18          25 to 27 cases where settlement was rejected, I think she  
19          indicated that there are two firms that have large groups  
20          of cases, and those two firms are actually in active  
21          settlement negotiations, and there are some small issues  
22          that have held up those settlements. So I think the actual  
23          rejection of settlement offers is a lot smaller than that.

24          I know that there are two cases in particular  
25          where it's quite clear that remand and trial is requested,

1 and there are several other individual cases that I'm less  
2 certain about, but there are going to be --

3 THE COURT: For those two, can we get those  
4 remands going right away?

5 MR. GOLDSER: I don't see why not.

6 MS. VAN STEENBURGH: Absolutely.

7 MR. GOLDSER: One is to New Mexico. One will be  
8 to Baltimore.

9 MS. VAN STEENBURGH: Then there are three. There  
10 is another one in Chicago.

11 MR. GOLDSER: Okay. That one I don't have off  
12 the top of my head. Sure. There is no reason we can't.

13 THE COURT: If you can prepare a draft order for  
14 the Court on those cases, we can get those done right away.

15 MR. GOLDSER: Okay. I'm glad that the first  
16 order to show cause was met. To be sure, some plaintiffs'  
17 lawyers respond only to deadlines, but they met their  
18 deadlines, and some plaintiffs' lawyers work a little  
19 faster than that.

20 With regard to the Padberg firm, I don't know if  
21 Dave Bauman joined on the phone later, but he had been  
22 under the impression that he had submitted to me his  
23 settlement materials, and I only just realized this morning  
24 that I had not gotten them. So my perspective and his  
25 perspective, there is a communication issue.



1           From defense perspective, there is a dilatory  
2     tactic. It doesn't matter. We have reached an agreement  
3     on a date by which he will get his stuff in. I believe he  
4     will get it in, and hopefully we can get those cases  
5     settled as well.

6           And then finally on the forum non motions, the  
7     Bertram Graf cases, there are twelve of those that are  
8     listed. They are one of the firms that is very close to  
9     getting cases settled. The issue in their cases is medical  
10    liens, and we've got to talk through that.

11           Finally, on the Carey & Danis cases, I had an  
12    e-mail exchange with John Carey this morning. He would  
13    prefer, I think, to come and address the Court in person if  
14    that appears necessary. So assuming that we do set a  
15    status conference for March sometime, I would like to give  
16    him notice well in advance so he can get it on his  
17    calendar, given that he has got the largest cache of cases.

18           I think he would like to come and address the  
19    Court personally so we can talk about where we're going,  
20    whether there is any vehicle for settlement for those  
21    cases, whether it makes sense to do that and get Magistrate  
22    Judge Boylan involved in that process, and if not, how to  
23    handle remands and PFSs and all the stuff that is attendant  
24    to his inventory of cases.

25           THE COURT: All right. Anyone on the phone have

1 anything to raise?

2 All right. Hearing none, there is a few items  
3 that we will get at right away here, but should we set  
4 another status conference for a month out?

5 MR. GOLDSER: That would be good.

6 THE COURT: How does Tuesday, March 5th, look?

7 MS. VAN STEENBURGH: Since we were supposed to be  
8 here for a trial, I guess we don't have much of an excuse,  
9 Your Honor.

10 THE COURT: I guess the date was probably held,  
11 at least by some of you.

12 MS. VAN STEENBURGH: That's true.

13 THE COURT: Why don't at this point we do the  
14 same time, 12:30, on Tuesday, March 5th? If for some  
15 reason my trial has ended by then, we may change the time,  
16 but I think it would be best to leave it at 12:30 right  
17 now.

18 MR. GOLDSER: All right.

19 THE COURT: Anything else for today?

20 MR. GOLDSER: I don't think so. Thank you, Your  
21 Honor.

22 THE COURT: Very good. Thank you. We will be in  
23 recess, and we will see everyone in a month. The Court is  
24 in recess.

25 MR. FITZGERALD: Thank you, Your Honor.

1 MS. VAN STEENBURGH: Thank you, Your Honor.

2 THE CLERK: All rise.

3 **(Court was adjourned.)**

4 \* \* \*

5 I, Kristine Mousseau, certify that the foregoing  
6 is a correct transcript from the record of proceedings in  
7 the above-entitled matter.

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11 Certified by: s/ Kristine Mousseau, CRR-RPR  
12 Kristine Mousseau, CRR-RPR

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